

**EXECUTIVE FORCE REVIEW BOARD
OAKLAND POLICE DEPARTMENT
Officer H. Jimenez**

Date of IAD ROI: 12 Dec 08
 Date of Board: 6 Jan 09
 Date of Report: 26 Jan 09

In accordance with Departmental General Order K-4.1, Force Review Boards, an Executive Force Review Board (EFRB) was held on 6 Jan 09 to examine the factual circumstances of the officer involved shooting of Mack Woodfox by Officer H. Jimenez on 25 Jul 08. Woodfox was involved in a vehicle pursuit and suspected of being a dangerous DUI. Woodfox fled from his vehicle on foot in the direction of Officers Jimenez and Aylworth and was shot by Jimenez. Woodfox expired from the wounds. The following personnel were in attendance:

VOTING MEMBERS	
ASSIGNMENT	NAME
BOS – Chairperson	Deputy Chief J. Loman
BOI	Deputy Chief J. Israel
BFO	Deputy Chief D. Kozicki

NON-VOTING MEMBERS	
ASSIGNMENT	NAME
Discipline Officer	Lieutenant S. Whent
Use of Force Policy	Captain E. Breshears
Patrol Procedures SME	Sergeant M. Reilly
Range Master SME	Officer D. Burke
Range Master SME	Officer F. Uu
Training Commander	Lieutenant B. Medeiros
City Attorney Office	Rocio Fierro
Commander of Subject	Captain Orozco

PRESENTERS	NAME
IAD Investigator	Sergeant H. Jordan
Homicide Investigator	Sergeant T. Jones

ADDITIONAL ATTENDEES	
BOI	NAME
BOI	Captain B. Fairow
OIG	Captain Figueroa
OCOP	Assistant Chief H. Jordan
Homicide	Lieutenant Joyner

CONFIDENTIAL

**EXECUTIVE FORCE REVIEW BOARD
OAKLAND POLICE DEPARTMENT
Officer H. Jimenez**

Date of IAD ROI: 12 Dec 08
Date of Board: 6 Jan 09
Date of Report: 26 Jan 09

ADDITIONAL ATTENDEES	
IMT	K. Evans
IAD	Sgt. Shaver

BOARD RESPONSIBILITIES

The meeting was opened by reviewing the Board's responsibilities (G.O. K-4.1, **FORCE REVIEW BOARDS**, I, B., 1 Oct 07):

- ◆ Force Review Boards are convened to evaluate force investigations, in-custody death investigations, and any related administrative or criminal investigation. The Board shall determine whether the force used was in compliance with Departmental policies and procedures and will identify any policy revision, training, tactical or other issues related to the use of force. The Chief of Police may direct a Board to review any use of force incident.
- ◆ The Executive Force Review Board (EFRB) is convened to review all Level 1 uses of force or any in-custody death incident.
- ◆ The analysis, findings and conclusions of this Board are strictly administrative and intended for self-evaluation, risk management and training, and to determine violations of policies of the Oakland Police Department. Nothing related to these proceedings shall be considered or interpreted as proof of liability.

CIRCUMSTANCES ATTENDING THE INCIDENT

On 25 Jul 08 at about 0349 hours, Officers H. Jimenez 8744P and J. Aylworth 8802P attempted to conduct a traffic enforcement stop on a vehicle in the 3000 block of Fruitvale Ave. for speeding and reckless driving. The driver, later identified as Woodfox refused to stop. Woodfox made a U-turn and sped off south on Fruitvale Ave. Woodfox drove recklessly through intersections without stopping. Woodfox slowed the car down then stopped abruptly in the 1700 block of Fruitvale Ave. Woodfox jumped out of the car, while it continued to move forward, and refused to comply with the officers' commands. Woodfox concealed his right hand in or near his waistband as he ran back in the direction of the officers.

Jimenez discharged several rounds at the suspect, striking him three times, once in the left triceps and twice in the torso. Woodfox was transported to Alameda County Hospital (ACH) where he was pronounced dead.

Jimenez stated that when Woodfox jumped from the car, Woodfox momentarily ran northbound directly toward the driver's side of their police car. Jimenez initially couldn't see the suspect's right hand and was only able to see the left side of Woodfox's body. Jimenez saw Woodfox's

CONFIDENTIAL

EXECUTIVE FORCE REVIEW BOARD**OAKLAND POLICE DEPARTMENT****Officer H. Jimenez**

Date of IAD ROI: 12 Dec 08

Date of Board: 6 Jan 09

Date of Report: 26 Jan 09

right hand in the waistband and his left hand swing freely. Jimenez commanded, "Stop! Get your hands up! Let me see your hands! Get your hands up! Stop!" Woodfox didn't comply with Jimenez' commands.

Jimenez stated that, fearing for the safety of his partner and himself fired his pistol three to four times at Woodfox. Woodfox was near the driver's side front fender of the police car when Jimenez initially fired his first four rounds. Jimenez assessed Woodfox's actions. Jimenez gave Woodfox a second command saying, "Stop," but Woodfox continued to run at an angle toward his partner. According to Jimenez, Woodfox was near the front of the driver's door of the police car when he fired his second series of gunshots as he began to run east away from the police car.

Aylworth stated that he exited the police car as Woodfox got out of his car. Aylworth began to give the suspect commands to show his hands. Woodfox was given approximately four separate commands from Jimenez and Aylworth.

Woodfox turned his body to the left to get out of the car. Woodfox didn't look in the direction of Aylworth. Aylworth could see Woodfox's hands and did not see a weapon. Woodfox took two steps eastbound and slightly toward the north and immediately made a motion with both hands to his waistband. Aylworth was threatened by the suspect's failure to comply with their commands and the suspect's motion to his waistband.

Aylworth heard four to five shots from his right. Woodfox's motion slowed down, his body convulsed, and his arms flailed back and forth as he continued to move eastbound away from the officers. Aylworth could see the suspect's hands again and the suspect didn't have a weapon after the first set of shots and from his perspective the suspect's hands were no longer concealed in his waistband after the first set of shots.

The suspect continued to move eastbound and Aylworth heard approximately three more shots. Aylworth didn't feel he needed to shoot the suspect because his motion had slowed down as well as both hands being visible did not present a lethal threat. The suspect's motion continued to slow further and the suspect yelled out with a noise consistent with being in pain. The suspect slowly took a couple of more steps and fell to the ground.

The Internal Affairs Division investigation concluded that this shooting was not reasonable and did not comply with Departmental policy.

The Board's discussion included the reasonableness of the perceived threat to the officers, the location of the suspect and the officers' tactical approach to this vehicle stop. Based upon the preponderance of evidence (physical evidence and the officer and witness statements) the Board determined that Jimenez' perception that Woodfox was an imminent lethal threat was unreasonable both during the initial rounds fired as Woodfox exited his car and the subsequent rounds fired as Woodfox moved away from the officers.

CONFIDENTIAL

**EXECUTIVE FORCE REVIEW BOARD
OAKLAND POLICE DEPARTMENT
Officer H. Jimenez**

Date of IAD ROI: 12 Dec 08
Date of Board: 6 Jan 09
Date of Report: 26 Jan 09

ADEQUACY OF EQUIPMENT

No issues.

RECOGNITION OF SUPERIOR TACTICS

Wehrly's made contact with Jimenez and sought a public safety statement properly. Wherly monitored and cancelled the pursuit when appropriate.

POLICY CHANGES

None. Homicide and IAD investigators should consider crime scene callout of Lab for processing.

It is recommended that the Department designate a small group of IAD investigators who respond to OIS scenes to investigate. This would allow for the top investigators to be involved with these high risk incidents and improve the consistency and quality of investigations.

TACTICS/TRAINING ISSUES

The following training issues were identified;

- Leaving a position of cover, threat assessment (Jimenez). Jimenez moved away from his vehicle, V- of door, in the direction of the suspect.
- Felony car stop procedures. Officers should maintain enough distance between their patrol vehicle and the suspects vehicle to allow for utilizing proper felony car stop protocols. (Jimenez, Aylworth)
- Leading questions by Homicide during interviews
- Photographs taken to show full context of incident scene to provide perspective.
- If an re-enactment of the shooting is conducted, it should be recorded for evidentiary purposes
- Ensure that witnesses independently identified by the media are contacted
- Public Safety Statements. Public Safety statements should not include an inquiry into the incident. The Public Safety Statement should only include the number of suspects, outstanding suspects, and the number and direction of shots fired. The location of injured persons or evidence can be included.
- Statements taken by officers should include context as to date time the witness is referring to. Signed written statements should be taken from contacted persons who did not witness UOF not just summarized in supplemental. (Kemmitt)
- Officers complete the witness signature as required by policy. (diagonal line)
- Supervisor should ensure that all magazines and firearms are recovered from involved officers at Homicide.

CONFIDENTIAL

EXECUTIVE FORCE REVIEW BOARD
OAKLAND POLICE DEPARTMENT
Officer H. Jimenez

Date of IAD ROI: 12 Dec 08
Date of Board: 6 Jan 09
Date of Report: 26 Jan 09

RECOMMENDED FINDINGS

The members of the Board determined that the statements of the officers, witnesses, materials presented, and information provided by the Internal Affairs investigator were sufficient to render a finding.

The Board voted that the initial rounds fired by Jimenez were **“Not Compliant with Policy”** in accordance with the provisions of Departmental General Order K-3 (Use of Force). (Kozicki/Israel – Not in Compliance, Loman – In Compliance)

The Board voted unanimously that the second series of rounds fired by Jimenez were **“Not Compliant with Policy”** in accordance with the provisions of Departmental General Order K-3 (Use of Force).

DELIVERABLES

- IAD follow-up of witness, (b)(5)(B), identified in media.
- ICV capture incident? Completed by Breshears, no ICV of incident.

Jeffrey Loman
Deputy Chief of Police
Bureau of Services

Eric Breshears
for DC Loman

Wayne J. Tucker
Wayne Tucker
Chief of Police

CONFIDENTIAL

Oakland Police Department

Internal Affairs Division

Investigative Report

Date: 12 Dec 08

MEMORANDUM

TO: Executive Force Review Board

SUBJECT: Use of Force Report (08-0817) – Officer Involved Shooting (OIS)

Narrative

On 25 Jul 08 at about 0349 hours, Officers H. Jimenez 8744P and J. Aylworth 8802P attempted to conduct a traffic enforcement stop on a Buick Regal, 4d, red, in the 3000 block of Fruitvale Ave., for speeding, and reckless driving. The driver, later identified as Woodfox, Mack "Jody" refused to stop. Woodfox made a U-turn and sped off south on Fruitvale Ave. Woodfox stopped the car in the 1700 block of Fruitvale Ave. Woodfox got of the car and refused to comply with the officer's commands. Woodfox concealed his right hand in his waistband as he ran in the direction of the officers.

Jimenez discharged several rounds at the suspect, striking him three times, once in the left triceps and twice in the torso. Woodfox was transported to Alameda County Hospital (ACH) where he was pronounced dead.

Investigators

Homicide Investigators: Sgt. T. Jones- Lead Criminal Investigator
Sgt. D. Longmire

CID Commander: Lt. E. Joyner

Watch Commander: Cpt. R. Orozco

IAD Investigators: Sgt. H. Jordan – Lead Administrative Investigator
Sgt. T. Shaver

Personnel Involved

Subject Officer: Hector Jimenez
Assignment: Patrol

Appointed to OPD: 7 Feb07
Last firearm qualification: 12 Dec 07

Jimenez has been involved in one prior officer involved shooting (OIS) incident.

Suspect Information

Name: Woodfox, Mack Miller
AKA: Woodfox, Jody
Personal: MB (b)(5)(C) 27 years old
Home: (b)(5)(C)
Work: None

Violations that led to police contact:

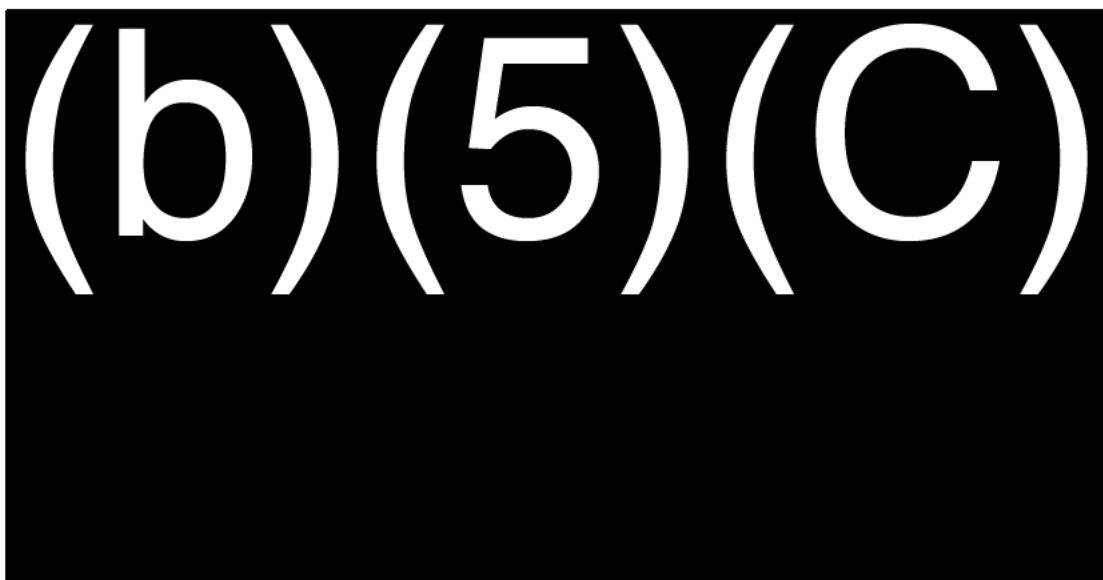
1. Reckless Driving- 23103 CVC

Violation during police contact:

1. Obstruct/Resist Public Officer- 148(a) PC
2. Evading a peace officer- 2800.1 VC

Previous convictions and/or arrests:

(b)(5)(C)



(b)(5)(C)

Probation Status

(b)(5)(C)

Parole Status:

(b)(5)(C)

Description of Scene

The area of Fruitvale Ave. at E. 17th Street is largely residential. Fruitvale Ave. is a heavily traveled north and southbound thoroughfare. The street is lit by several street lights. There is a church, the Miraculous Foundation Church, on the eastside of the block.

Subject Officer Statement

Summary statements have been written to reflect the individual's recollection of the incident. No portions contained therein have been supplemented by the Internal Affairs Division.

Officer Hector Jimenez 8744P (Recorded Statement taken on 25 Jul 08 at 0916-1031 hrs by Sgt. T. Jones, Lt. E. Joyner, Sgt. D. Longmire, Assistant District Attorney John Jay, District Attorney Investigator Jay Patel and LDF representative Justin Buffington were also present during the interview. I monitored the interview by speakerphone from Lt. Joyner's office.)

Jimenez was working as patrol unit 6A21 with his partner, Aylworth, in Area 2. He was dressed in the Oakland Police Department (OPD) wool uniform. He was not carrying a Taser. Aylworth was driving fully marked OPD vehicle 1706. They were driving southbound on Fruitvale Ave. near Galindo St. when they saw a red four door vehicle traveling northbound at a high rate of speed.

Jimenez and Aylworth decided to conduct a traffic enforcement stop on the car traveling at a high rate of speed. Aylworth made a U-turn in an attempt to catch up to the vehicle. A van was between the police car and the speeding vehicle.

Jimenez could see the car ahead of the van. Aylworth veered to the side so Jimenez could see the vehicle cross left of center and straddled the lanes into the oncoming lane of traffic.

Jimenez and Aylworth discussed their observations and concluded that the driver was possibly under the influence. They activated their emergency lights at Fruitvale Ave. and School Street attempting to initiate a traffic enforcement stop for the driver being under the influence of alcohol. The vehicle briefly pulled over, and then quickly made a U-turn southbound.

Jimenez saw Woodfox's face as he passed and saw that he was sweating. Aylworth made a U-turn and pursued Woodfox. They advised dispatch that they were pursuing a "dangerous drunk." Their speed was about sixty miles per hour. The vehicle was weaving into the northbound lane of traffic. There was no vehicle or pedestrian traffic on Fruitvale Ave. at the time. During the pursuit, Jimenez didn't hear a supervisor acknowledge monitoring the pursuit or ordering the pursuit to be terminated.

Woodfox failed to stop for the red lights at either E. 27th Street, or Foothill Blvd. Woodfox attempted a westbound turn on E. 17th St., but continued south on Fruitvale. Jimenez and Aylworth were surprised when the car quickly stopped, causing Aylworth to stop next to the suspect's vehicle in the intersection at Fruitvale Ave. and E. 17th Street.

Woodfox jumped from his still moving car as it slowly rolled southbound (away from the police vehicle). Woodfox momentarily ran northbound directly toward the driver's side of their police car. Jimenez initially couldn't see the suspect's hands. Jimenez could only see the left side of Woodfox's body. Woodfox was running at an angle. Jimenez saw Woodfox's right hand in the waistband and his left hand swing freely. Jimenez said, "Stop. Get your hands up. Let me see your hands. Get your hands up. Stop." Woodfox didn't comply with Jimenez's commands. Jimenez was outside of the "V" of the passenger door. Woodfox was about two to five feet away from Jimenez when he got out of the vehicle.

Jimenez, fearing for the safety of his partner and himself, discharged his pistol three to four times at Woodfox. Woodfox was near the drivers' side fender of the police car when Jimenez initially fired his first four rounds. Jimenez assessed Woodfox's actions. Jimenez gave Woodfox a second command saying, "Stop," but Woodfox continued to run at an angle toward his partner. Woodfox was near the front of the driver's door of the police car when Jimenez fired his second series of gunshots. Woodfox began to run east away from the police car as Jimenez fired his second five shots. Jimenez moved to the front of the police car when he fired the second series of gunshots.

Jimenez has been involved in about fifteen to twenty foot pursuits during his career. During those pursuits, the suspects usually didn't conceal their hands in their waistbands. Once during a foot pursuit on 11 Jun 08, a suspect ran with his hand concealed in his waistband. During that pursuit, the suspect discarded a firearm.

Jimenez characterized Fruitvale Ave. as a street that has a high amount of criminal activity that includes robberies, gang activity and narcotic sales. Jimenez also characterized suspects that conceal their hands in their waistband as suspects attempting to conceal weapons or contraband. Woodfox's body motion convinced Jimenez that he was armed with a firearm. Jimenez discharged his firearm at Woodfox until he fell to the ground. Jimenez fired a total of nine rounds at Woodfox. Jimenez assessed the scene then performed a tactical reload after Woodfox fell to the ground.

Aylworth detained the female passenger. Aylworth didn't find any weapons inside Woodfox's car. Jimenez handcuffed Woodfox and searched his waist area. Woodfox didn't have a weapon.

Jimenez' backdrop was a church and several cars. The streets lights were on but it was dark. Jimenez described the lighting condition as average with "shadows."

Jimenez didn't receive any cellular phone calls or make any calls after the incident. Jimenez received several text messages from coworkers asking if he was okay. Jimenez didn't respond to the text messages. Jimenez didn't send any messages using his mobile computer.

Jimenez thought the entire incident lasted forty-five seconds to one minute. Jimenez thought five to ten seconds elapsed between the time Woodfox ran from his car until he fell to the ground. Jimenez was not injured during the incident.

Jimenez slept eight to nine hours before his shift (0600 hours to 1600 hours). He had not consumed any alcoholic beverages the day before.

Subject Officer Re-interview

Officer Hector Jimenez 8744 (Recorded statement on 15 Aug 08 at 1638 – 1653 hrs., by Sgt. H. Jordan. Sgt. D. Jim and LDF representative Justin Buffington were also present during the interview).

Woodfox jumped from the vehicle and ran at a forty-five degree angle toward the police car. Jimenez' initial location was between the "V" of the car door and the right front fender of the police vehicle. Jimenez saw Woodfox's left hand making a swinging motion prior to seeing Woodfox's right hand. Woodfox then made a quick movement to his waistband with his right hand. Jimenez fired his first rounds at Woodfox from this location.

Jimenez was moving when he assessed Woodfox's actions. Jimenez thought Aylworth was still inside the police car. In order to prevent a crossfire situation, he began moving to the front of the police car. Jimenez gave Woodfox another verbal command to stop but Woodfox failed to comply with the order. Jimenez fired his second set of shots as he was moving toward the front of the police car. Woodfox was even with the driver's side

headlight when Jimenez fired his second set of shots at him. Jimenez told Aylworth to secure Woodfox's vehicle. Jimenez and Aylworth didn't have any other conversation about the incident.

Police Witness Statements

Officer Joel Aylworth 8802 (Recorded Statement on 25 Jul 2008 at 1122 - 1225 hrs., by Sgt. T. Jones. Lt. E. Joyner, Sgt. D. Longmire, Assistant District Attorney John Jay, District Attorney Investigator Jay Patel and LDF representative Justin Buffington were also present during the interview).

Aylworth was working as Patrol unit 6A21 with Jimenez in Area 2. Aylworth was the driver and Jimenez was the passenger. Aylworth was driving southbound on Fruitvale Ave. when he noticed a red vehicle traveling northbound at a high rate of speed. Aylworth made a U-turn in the 2500 block of Fruitvale Ave. attempting to catch up to the vehicle.

A van was between the police car and the speeding vehicle. Jimenez could see the car ahead of the van. Aylworth could also see the vehicle as it weaved back and forth into the oncoming lane of traffic. Aylworth passed the van in the 2700 block of Fruitvale Ave. and attempted to initiate a traffic enforcement stop for the driver being under the influence of alcohol.

Aylworth activated the police car's emergency lights in the 3000 block of Fruitvale Ave.. The vehicle slowed down and began to veer to the right as if it was going to stop. Aylworth notified dispatch that they were making a traffic enforcement stop on a dangerous drunk driver.

The vehicle made a U-turn and the driver looked in the direction of the police car. Aylworth saw the driver and a female passenger. Aylworth made a U-turn and began following the car. Aylworth activated the police car's siren and Jimenez updated their speed and road conditions to the dispatcher.

Aylworth pursued the vehicle southbound on Fruitvale Ave. The suspect vehicle passed another vehicle by veering into the oncoming lane of traffic. The vehicle continued south on Fruitvale Ave. crossing Foothill Blvd., and failed to stop for the red light.

The roadway changed from one lane to two lanes of traffic southbound. The vehicle weaved crossing the double yellow line into the northbound traffic lanes. The vehicle weaved back into the southbound lane.

The vehicle weaved back into the northbound traffic lane then back into the southbound traffic lane, nearly colliding with parked cars. The suspect's car came to a stop. Aylworth drew a diagram of the position of the police car and Woodfox's vehicle.

The police car's right front fender stopped near the left rear fender of Woodfox's car at a slight angle about two or three feet away. Aylworth stopped the police car near the side of the suspect's car. Jimenez immediately got out of the car pointed his gun at Woodfox, and began yelling, "Get your hands up. Let me see your hands. Let me see your hands." Aylworth removed his seatbelt and saw the suspect fidget with the gear shift momentarily. Aylworth got out of the police car as Woodfox got out of his car. Aylworth began to give the suspect commands to show his hands. Woodfox was given approximately four separate commands from Jimenez and Aylworth.

Woodfox turned his body to the left to get out of the car. Woodfox didn't look in the direction of Aylworth. Aylworth could see Woodfox's hands and did not see a weapon. Woodfox took two steps eastbound and slightly toward the north and immediately made a motion with both hands to his waistband. Aylworth's view of the suspect was southwest across the hood of the police car. Aylworth was threatened by the suspect's failure to comply with their commands and his motion to his waistband.

Aylworth heard four to five shots from his right. Woodfox's motion slowed down, his body convulsed, and his arms flailed back and forth as he continued to move eastbound. Aylworth could see the suspect's hands again and he didn't have a weapon after the first set of shots. The suspect's hands were no longer concealed in his waistband after the first set of shots.

The suspect continued to move eastbound and Aylworth heard maybe three more shots. Aylworth didn't feel he needed to shoot the suspect because his motion had slowed down. The suspect's motion continued to slow further and the suspect yelled out with a noise consistent with being in pain. The suspect slowly took a couple of more steps and fell to the ground. Aylworth could see his right hand but could not see his left hand.

Woodfox possibly fell on his left hand. The suspect vehicle continued to slowly roll southbound. Woodfox possibly didn't put the car in park. The car came to rest against the west curb, south of E. 17th Street. Officer Jimenez handcuffed the suspect. Aylworth ran to the suspect vehicle because he didn't know who else was inside the vehicle.

Aylworth pointed his firearm at a female passenger, gave her commands to show her hands and exit the vehicle. Aylworth handcuffed the passenger and conducted a pat search for weapons. Aylworth sat the passenger on the curb and conducted a search of the car. Aylworth discovered empty bottles of alcohol inside the vehicle.

Aylworth estimated the incident lasted about one minute from the time the traffic stop was initiated until the suspect fell to the ground. Aylworth heard about seven gunshots. He couldn't see where Officer Jimenez was when the gunshots began.

Aylworth clarified why he felt he was in danger. Aylworth felt his life was in danger several times during the incident. Aylworth feared the suspect would back into his partner or him as he fidgeted with the gear shift when the car the car initially stopped.

The suspect failed to comply with their commands and he immediately put his hands in his waistband. He was also concerned that the suspect was running in his direction.

Officer J. Aylworth (Re-interview)

On 8 Aug 08 1010 – 1032 hrs., Sgt. R. Chan and I took a recorded statement from Aylworth.

Aylworth and Jimenez have been working as partners since the shift change in January 08. Aylworth described Jimenez' demeanor as normal at the termination of the pursuit. Aylworth used a hand drawn map to show the vehicle's position at the termination of the pursuit.

Aylworth also drew Woodfox's path as he ran from the vehicle. Aylworth marked Woodfox's location when he heard the shots with an X. Aylworth marked his location and the last location he saw Jimenez. Aylworth's position didn't change during the incident. Aylworth was in the driver's side "V" of the door. Aylworth last saw Jimenez in the "V" of the passenger side door.

Aylworth's thought process was to apprehend Woodfox. Woodfox failed to comply with their commands and ran in their direction. Woodfox's actions heightened Aylworth's threat level. Aylworth was not sure if Woodfox had a gun. When Woodfox was struck with bullets, Aylworth was not sure if the suspect had a gun.

Aylworth's experience has taught him that suspects usually conceal firearms in their waistband. Aylworth was still assessing the need to use deadly force when he heard the first gunshots.

Aylworth had a better vantage point of the suspect prior to hearing gunshots. Aylworth had not made a decision to use deadly force when he heard the gunshots. Jimenez gave approximately three to four verbal commands to Woodfox. Half of the commands were possibly given to Woodfox as he sat in the car. Aylworth gave two to three commands to Woodfox.

Aylworth couldn't remember if Woodfox's head turned in his direction as he ran. Woodfox took two to three steps northbound to clear the driver's door then eastbound slightly facing north. Aylworth reassessed Woodfox's actions after hearing the gunshots. Aylworth and Jimenez didn't have any discussion during the incident. Aylworth estimated about two seconds or less elapsed before the first gunshot. Aylworth estimated the entire incident lasted two to three seconds.

Civilian Witness Statements

(b)(5)(B) (Recorded statement taken on 25 Jul 08 at 0824 – 0848 hours by Sgt. L. Cruz and Sgt. J. Parkinson.)

Woodfox was driving (b)(5)(B) to the twenty-four hour Walgreen's to buy some diapers. (b)(5)(B) knew Woodfox as Jody. (b)(5)(B) didn't know who the car belonged to. (b)(5)(B) had never seen Woodfox driving the car before the incident. (b)(5)(B) met Woodfox about two weeks ago. Woodfox told (b)(5)(B) he was twenty-eight years old. (b)(5)(B) and Woodfox were on Fruitvale Ave. going toward the 580 Freeway.

The police car was going in the opposite direction. The police car turned around. Woodfox was not driving fast and they both had on seatbelts. Woodfox made a U-turn as the police turned on their lights. Woodfox didn't say why he made the U-turn. Woodfox drove for a little ways then stopped the car. The car tires didn't squeak.

Woodfox got out of the car immediately and closed the driver's side door. Woodfox didn't have anything on him or say anything. (b)(5)(B) heard lots of gunshots. The police officers didn't say anything to Woodfox before they started shooting. (b)(5)(B) was looking ahead when she heard the gunshots. As (b)(5)(B) heard gunshots, another police officer pointed a gun at (b)(5)(B)'s head and told her to get out of the car.

(b)(5)(B) took off her seatbelt and looked back toward the police car. (b)(5)(B) briefly saw a police officer on the driver's side at the front of the police car shooting. (b)(5)(B) was about ten feet away from the police car. There was more than one gun shooting. (b)(5)(B) could not describe the officer she saw shooting. (b)(5)(B) saw Woodfox fall to the ground but didn't see if he was running or walking.

(b)(5)(B) saw Woodfox raise his hands up when he got out of the car. The officer handcuffed her and checked her pockets. (b)(5)(B) didn't know if Woodfox had been drinking or took any drugs. (b)(5)(B) didn't know how far Woodfox was away from the car when he was shot. (b)(5)(B) didn't know where Woodfox's hands were when the shooting started. (b)(5)(B) was focusing on the officer that was pointing his gun at her.

(b)(5)(B) estimated the incident lasted about a minute and a half. (b)(5)(B) was timed by Sgt. Parkinson to gauge her estimate using his wrist watch. (b)(5)(B)'s estimate of one minute and thirty seconds was timed at six seconds by Sgt. Parkinson. (b)(5)(B)'s window was up when the officer pointed his gun at her. Woodfox wasn't trying to evade the police. (b)(5)(B) told Woodfox to stop and pull over. Woodfox was not driving like he was in a high speed chase. (b)(5)(B) drank a little alcohol earlier at about 9pm.

(b)(5)(B) (Recorded statement on 25 Jul 08 at 0612 - 0627 hrs. by Sgt. Cruz).

(b)(5)(B) was at home alone in bed at about 0300 hours, when she heard a screeching noise from a vehicle. (b)(5)(B) stood up on her bed and looked out of the window. (b)(5)(B)'s bedroom window gave her a view of Fruitvale Ave. toward International. (b)(5)(B) saw a vehicle of unknown make, model, or color stopped near Fruitvale Park.

A police car came with the siren going. (b)(5)(B) saw a man who she couldn't describe wearing a hat, dark colored shirt and pants get out of the driver's side of the car. (b)(5)(B)

was too far away to see the man's face. A police car pulled over behind the man's car. The man was already out of the car running east across Fruitvale Ave.

The passenger officer got out of the police car and ran to the rear of the police car. The driver got out and took a few steps toward the man running. The driver pointed his gun at the man and started shooting. The man was running in the northbound lane of traffic near the curb when the officer shot at him.

The officer shot at the man once then shot three to four more times fast. The man fell to the street face first and his hat fell off. The man never looked back and his hands were swinging. The man was facing to the left when he was shot. The man was running fast trying to get away. The officer who shot the man approached him and stood over him.

The passenger officer never shot at the man. The passenger officer got out of the police car and approached the suspect vehicle. There was nobody else in the car. The officers met at their vehicle and talked about what had happened. (b)(5)(B) moved from her bedroom window to the kitchen window. The first shot happened before (b)(5)(B) made it to the kitchen window.

(b)(5)(B) determined based on the screeching sounds of the tires that the driver was not familiar with the streets. The car's tires screeched when the driver tried to go down E. 18th and E. 17th Streets and saw they were dead-end streets. (b)(5)(B) didn't see anyone else on the street at the time of the shooting.

Neighborhood Canvass Results

A canvass was conducted and sixty-one (61) statements were taken resulting in the following:

(b)(5)(B) - (b)(5)(B)

(b)(5)(B) was on his couch in the living room of his apartment. (b)(5)(B)'s living room window faced Fruitvale Ave. The sound of screeching tires caught (b)(5)(B)'s attention. (b)(5)(B) looked out his living room window and saw the driver's side of the police car. A police officer stood next to the driver's side of the police car and shot his gun. (b)(5)(B) heard about four gunshots. (b)(5)(B) saw someone on the ground across the street from where the police officer was. A second officer approached a red car that was parked in front of his window. The officer yelled at a black girl that was in the red car to get out of the car. The girl came out of the car and the officer had her sit on the curb of the sidewalk. The police car was about fifty feet from his window facing International Blvd. The red car was also facing International Blvd.

(b)(5)(B) - (b)(5)(B)

(b)(5)(B) was sleeping on the porch of the Miraculous Foundation Church. (b)(5)(B) heard the police officer say, "get out the car" then heard six gun shots. Before the gun shots, (b)(5)(B) heard the sound of speeding cars. (b)(5)(B) didn't see what occurred.

(b)(5)(B) - (b)(5)(B)

(b)(5)(B) was at home with her husband in bed. (b)(5)(B) and her husband (b)(5)(B) were awakened by gunshots. (b)(5)(B) heard the police yell, "put yours hands up!" The police yelled this over and over. (b)(5)(B) didn't see the police shoot their guns.

(b)(5)(B) -(b)(5)(B)

(b)(5)(B) was at home sleeping when he heard five gun shots. (b)(5)(B) heard someone yelling, "Put your hands up." (b)(5)(B) stayed in bed and didn't see anything.

(b)(5)(B) -(b)(5)(B)

(b)(5)(B) was lying in bed at home when he heard tires squealing. (b)(5)(B) then heard sirens. (b)(5)(B) heard gun shots and officers yelling, "Get your hands up, get your hands up," over and over again. (b)(5)(B) did not witness the incident.

(b)(5)(B) -(b)(5)(B)

(b)(5)(B) heard about five gunshots. (b)(5)(B) thinks he saw a woman sitting down close to the corner of Fruitvale Ave. and E. 17th Street. (b)(5)(B) then saw a bunch of police come.

(b)(5)(B) -(b)(5)(B)

(b)(5)(B) heard sirens from the police chasing a car. (b)(5)(B) heard approximately four gunshots. (b)(5)(B) didn't see anything.

(b)(5)(B) -(b)(5)(B)

(b)(5)(B) was sleeping and was awakened by the sound of gunshots. (b)(5)(B) looked out of his window and didn't see anything. (b)(5)(B) walked out on to his balcony and saw five police cars. (b)(5)(B) was tired so he went back to bed.

(b)(5)(B) -(b)(5)(B)

(b)(5)(B) was walking home northbound on Fruitvale Ave. on the west sidewalk. A vehicle was traveling southbound on Fruitvale Ave. followed by a police car with sirens. The police car didn't have any lights flashing. (b)(5)(B) heard several gunshots. (b)(5)(B) hid behind a cement wall until she didn't hear anymore gunshots. (b)(5)(B) came from behind the wall and continued to walk northbound on Fruitvale Ave. (b)(5)(B) didn't see who had

fired a gun. (b)(5)(B) saw a male black lying on the ground. (b)(5)(B) also saw a black female get out of the red car with her hands up and arrested by officers.

(b)(5)(B) - (b)(5)(B)

(b)(5)(B) was awakened by three gunshots. (b)(5)(B) looked outside and saw the cops and a red car. (b)(5)(B) heard the police tell a woman to get out of the car. The woman was handcuffed when she got out of the car. The woman asked if someone was okay.

(b)(5)(B) - (b)(5)(B)

(b)(5)(B) heard about six gunshots then saw a lot of police come. (b)(5)(B) didn't see anything else.

Neighborhood Canvass – Additional Witnesses

Thirty- six residents were contacted during the canvass gave statements saying that they heard only gunshots.

Seventeen other residents contacted during the canvass gave statements saying that they didn't hear or see the incident.

On 15 Aug 08 at 1930 hours, I conducted a canvass of the Neighborhood attempting to contact residents that were not interviewed during the initial canvass. Officers S. Martin 8791P and J. Garcia 8888P assisted with translations.

Firearms

The examination of the firearm is still pending. Nine shell casings and one live round were recovered on scene. Ten rounds were missing from Jimenez's duty pistol.

Evidence

- OPD Crime Report #08-054357
- OPD Pursuit Report
- Criminal Case Information report
- Technicians Report
- One Sony DVD-R containing the Homicide walk through of the scene.
- Total station computer aided diagram of scene
- Criminalistics Report on bullet strike mark on Woodfox's vehicle
- Use of Force Face sheet
- Area II Watch Detail – 25 Jul 08
- CAD Incident Recall – Incident 142, 25 Jul 08

- CD containing Radio Purge - Incident # 142
- Use of Force Log, 25 Jul 08
- Daily Information Log, 25 Jul 08
- TMS Training Record – Off. H. Jimenez
- Jimenez's Performance Appraisal
- Jimenez's Corrective Action Log
- CRIMS printout – Woodfox, Mack PFN (b)(5)(C)
- AWS printout – Woodfox, Mack (b)(5)(C)
- DVROS Printout- Woodfox, Mack (b)(5)(C)
- CII Printout – Woodfox, Mack (b)(5)(C)
- CD Containing Jimenez' s Homicide/IAD interview
- CD Containing Aylworth's Homicide/IAD interview
- Crime Scene Photos taken by Evidence Technician B. Christensen
- Crime Scene Photos taken by PET J. Haymon
- CD (4) containing photos of crime scene
- DGO K-3 Use of Force
- Training Bulletin III – B.2 High Risk Vehicle Stop
- Force Science News Transmission #6
- New Developments in Understanding the Psychological Factors in the “Stop Shooting” Response by William J. Lewinski, Ph.D.
- Pathologist's Autopsy diagram
- Toxicology Report
- Hand drawn diagram of Fruitvale/E. 17th Street- Aylworth IAD interview
- Hand drawn diagram of Fruitvale/ E. 17th Street – Jimenez IAD interview
- Photocopy of hand drawn diagram of Fruitvale/ E. 17th Street – Aylworth Homicide interview
- Photocopy of hand drawn diagram of Fruitvale/ E. 17th Street – Jimenez Homicide interview
- Four newspaper articles regarding the shooting incident
- Copy of US District Court Civil suit

Evidence Technician Christensen recovered nine casings at the scene. Jimenez stated he fired nine rounds during the incident. An inspection of his pistol and magazine showed nine rounds missing.

Woodfox's car had what appeared to be a strike mark on the trunk. Two vehicles parked against the east curb were apparently struck by bullets.

Criminalist Mark Bennett examined Woodfox's vehicle in an attempt to determine the trajectory of the bullet that struck the trunk. Bennett's determined the bullet traveled from right rear to left front of the vehicle with an angle of approximately fifty-nine degrees relative to the squared back of the suspect vehicle.

I was unable to determine the location of three bullets. There were no additional strike marks of bullet holes discovered during the investigation.

Medical Information

AMR #506 transported Woodfox to ACH at 0415 hours. Woodfox was pronounced at 0417 hours.

The Medical Examiner has not finalized his report as of the completion of this investigation. Woodfox was struck three times by gunfire. One round struck his left bicep, one round struck the left side of his upper back and one round struck the left side of his lower back near his buttock. Pathologist Rogers determined that Woodfox died from multiple gunshot wounds to his upper torso.

The Toxicology report revealed that Woodfox had Ethyl alcohol, Cocaine and MDMA (Ecstasy) in his system.

Discrepancies and Clarifications

Woodfox's car had what appeared to be a fresh bullet strike mark on the trunk lid above the bumper. The angle of the strike mark appears to indicate that Jimenez fired at least one round in the direction of the "V" of the driver's side door of Woodfox's car. Aylworth stated Woodfox took two steps east and slightly toward the north clearing the open door then immediately concealed his hands in his waistband.

(b)(5)(B) stated she saw Woodfox jump from the car and immediately start running east across Fruitvale Ave., before the police car actually stopped behind Woodfox's car. (b)(5)(B) made her initial observations from her bedroom window. As (b)(5)(B) moved from the bedroom to the kitchen window, (b)(5)(B) heard gunshots before she made it to the kitchen window.

Based on her statement it appears (b)(5)(B) moving from the bedroom to the kitchen window prevented her from seeing the initial discharge by Jimenez. (b)(5)(B) said the driver shot at Woodfox, not the passenger, which contradicts Jimenez and Aylworth's statements.

(b)(5)(B) stated Woodfox was wearing a hat which fell off when he fell to the ground. (b)(5)(B) does not appear deceptive, however the evidence (Jimenez and Aylworth's statement, coupled with the bullet strike mark on the trunk of Woodfox's car) doesn't fully support her claim that the suspect had already run from the car prior to the police car stopping. Jimenez's movement to the front of the police car, as he fired his second course of fire, could explain (b)(5)(B)'s belief that the driver shot at Woodfox.

(b)(5)(B) made her observation from the second story window of her apartment that was approximately 350 feet from the scene. (b)(5)(B)' statement also contradicts Jimenez's statement that Woodfox ran at a ninety degree angle toward Aylworth.

(b)(5)(B) stated that Woodfox raised his hands and closed the door after getting out of the car, during her interview with Homicide investigators. (b)(5)(B) also stated she didn't see if Woodfox was walking or running prior to hearing gunshots. During an interview with the SF Chronicle, (b)(5)(B) stated Woodfox only began running across Fruitvale Ave., to escape the gunfire. (b)(5)(B) also stated during her interview with the San Francisco Chronicle that Woodfox was not reaching for anything at the time he was shot. (b)(5)(B)'s description of the events provided during her SF Chronicle interview directly contradicts her statement to Homicide investigators.

Aylworth stated Woodfox ran around the open driver's door of his car. When I arrived at the scene the driver's door on Woodfox's vehicle was closed. Photographs taken of the suspect vehicle at the scene showed the driver's door closed.

Aylworth did not appear deceptive during his Homicide or IAD interview. (b)(3)
(b)(3) Based on (b)(5)(B)'s contradictory statement to the SF Chronicle it is reasonable to believe Aylworth's statement that the driver's door was open.

Tech photos/proofs (#07680272, 0780273 and 0768275) of Woodfox's right leg show what appeared to be a possible gunshot wound. Pathologist Rogers was unable to determine if the injury was a gunshot wound. I examined Woodfox's pants at the Property/Evidence unit. I did not see any apparent gunshot holes in Woodfox's pants.

The statements provided by all witness have some variance in the number of gunshots people heard. This is not uncommon at shooting scenes.

District Attorney's Review

There has not been a charging decision yet rendered by the District Attorney's Office.

Command and Control

Sergeants Balzouman and Wehrly shared dual control of the incident. Wehrly coordinated units to establish traffic control posts and canvass for witnesses. Balzouman assigned officers to remain with Jimenez and Aylworth at the scene.

Deputy Chief J. Israel and Captain R. Orozco responded to the scene.

Medical assistance was summoned to the scene immediately following the shooting and arrived at 0402 hours.

Electronic Transmissions

This incident occurred on the “patched” citywide radio channel. It was being monitored by PCD J. Turner 4300CO.

0349 hours-	Aylworth and Jimenez initiated the pursuit
0349 hours-	Sgt. Wehrly requested the speed and conditions
0349 hours-	PCD J. Turner advises the speed is 60 MPH
0349 hours-	Sgt. Wehrly canceled the pursuit
0349 hours-	Jimenez advises of K-3 and requests code three medical
0351 hours-	Sgt. Wehrly responded to scene

Additional Considerations/ Issues

(b)(5)(C)

From Jan 08 to present, Jimenez had (b)(3) uses of force incidents which included:

- (1) Level One,

(b)(3)

(b)(3) (b)(3) The Level One incident was ruled in compliance with Departmental policy by the Executive Force Review Board. That incident also involved the shooting of an unarmed suspect.

(b)(3)

(b)(5)(C)

I contacted OPD Communication Division Sergeant B. Garbutt regarding the existence of “shot spotter” technology on Fruitvale Ave. Garbutt told me “shot spotter” technology had not been installed on or near Fruitvale Ave.

Sgt. Wehrly conducted the preliminary investigation of the pursuit. Sgt. Wehrly completed the pursuit report documenting his investigation. The pursuit report will be evaluated separately.

I reviewed the video of the homicide walk through of the OIS scene.

Analysis and Findings

Issues

Did the officers have a legal right to detain Woodfox?

Reasonable suspicion (a crime had occurred, was occurring, or was about to occur) had been met. Woodfox committed a vehicle code violation and failed to pull over as directed by Aylworth and Jimenez's emergency lights and siren. Woodfox fled from a lawful vehicle enforcement stop. Woodfox was required to identify himself to Aylworth and Jimenez but instead chose to flee. Woodfox's flight constituted a violation of PC 148(a) - Resist/Delay/Obstruct a Peace Officer and CVC 2800.1 - Evading a peace officer. Accordingly, the officers had a legal right to detain Woodfox.

Was Officer Jimenez's use of lethal force upon Woodfox consistent with Departmental policy?

Rule

Departmental General Order K-3, Use of Force states in part:

"Departmental policy requires personnel to use only that level of force that is objectively reasonable based on the totality of circumstances confronting them."

Lethal Force

1. Lethal force is authorized to defend the members or a third person from what the member reasonably believes is an imminent threat of lethal force or force likely to cause serious bodily injury; or
2. To apprehend or arrest a person whom the member reasonably believes has committed or is committing a violent felony which involves the use, or threatened use coupled with the apparent ability to carry out the use of lethal force or force likely to cause serious bodily injury; **and**
 - a. The person indicates by his or her conduct or by any other means that he or she presents an imminent danger of death or serious bodily injury to the member or a third person if not immediately apprehended, **and**
 - b. All other reasonably available means of apprehending the person have failed, are inadequate, or are immediately unavailable.

Imminent Threat

"Imminent threat refers to an impending threat or resistance that a member... reasonably believes will occur, based on the totality of circumstances. Imminent is not limited to "immediate" or instantaneous." A person may pose an imminent threat even if that person is not pointing a weapon at the member... A person is an imminent threat if the person is reasonably perceived by a member... to have the present intent, means, opportunity, and ability to complete the threat, regardless of whether the threatened action had been initiated.

Intent: The subject's apparent desire, which can be indicated by words, body language, or actions.

Means: The instrument, mechanical or physical, that may be used to cause injury.

Opportunity: The time and/or place which allows the subject to use the means to cause injury.

Ability: The subject has the capability to carry out the action or threat.

Violent Felony

Any felony which involves:

1. The use of lethal force
2. Force which creates a substantial risk of death or serious bodily injury; or
3. The threatened use of lethal force coupled with apparent ability to complete the threat.

Analysis

Jimenez' Perception

Jimenez believed Woodfox presented an immediate threat of lethal force to him and Aylworth. Jimenez described what he observed that led him to this belief.

- Woodfox fled a moving vehicle letting it slowly roll forward.
- Woodfox ran at a forty-five degree angle in the direction of the police car, north, toward Aylworth.

- Jimenez stated Woodfox refused to comply with his verbal commands to show his hands.
- Woodfox's right hand was concealed in his waistband as he ran in the direction of Aylworth.
- Jimenez thought Aylworth was still inside the patrol car as Woodfox ran suddenly toward the driver's side of the police vehicle.
- Jimenez described Woodfox running toward his partner as highly unusual.
- Jimenez saw Woodfox approximately two to five feet away from him when Woodfox ran from his vehicle toward Aylworth.
- Jimenez' full view of Woodfox was partially blocked by Woodfox's car.
- On 11 Jun 08, Jimenez was involved in a foot pursuit with a suspect who concealed his hands in his waistband. The suspect subsequently removed a handgun from his waistband and discarded it during the foot pursuit (RD# 08-043513). The firearm discharged upon hitting the ground.
- Jimenez' assessment and response to the actions of Woodfox required a response within seconds due to his close proximity to Woodfox and the fast – developing, high risk situation.

Intent:

Woodfox ran from his car after the vehicle pursuit and refused to comply with Jimenez and Aylworth's command to show his hands. Jimenez perceived Woodfox running at a forty-five degree angle toward Aylworth. Jimenez stated Woodfox's action were suspicious and highly unusual, however, Jimenez failed to provide specific facts that led him to believe Woodfox was attempting to use deadly force or seriously injure Aylworth as opposed to trying to escape apprehension. Both officers stated Woodfox did not look in their direction and were not sure of what Woodfox was focusing on.

Means:

Woodfox ran from the vehicle with his hand concealed in his waistband as he ran east and north from the vehicle. Woodfox's actions convinced Jimenez that Woodfox was retrieving a firearm. Theoretically, if Woodfox possessed a gun he could still retrieve and fire a gun from his position. However, at the time Jimenez discharged his weapon, Woodfox's actions, with no additional articulated facts, did not provide a reasonable basis to believe he was armed and, therefore, he had no means to cause serious injury to the officers.

Opportunity:

Jimenez stated Woodfox was within two to five feet of him as he concealed his hand in his waistband. However, based on the angle of the strike mark on the truck lid, it appears that Jimenez was approximately 10 feet from Woodfox when he discharged his pistol at Woodfox while Woodfox was still in the "V" of his door.

Ability:

Based on the information provided by Aylworth and Jimenez, Woodfox possessed the ability to use a firearm. However, the ability to use a firearm alone does not authorize the use of deadly force.

Woodfox failed to comply with Jimenez and Aylworth's initial attempt to conduct a car to stop to further investigate their belief that he was driving under the influence of an alcoholic beverage. Woodfox led the officers on a brief pursuit in an attempt to evade the initial detention. Woodfox clearly showed his intent not to submit to the authority of Aylworth and Jimenez. However Woodfox's actions didn't provide a reasonable basis to believe he was armed and was an immediate threat to Aylworth and Jimenez.

Based on the angle of the strike mark on the trunk lid of Woodfox's car it is reasonable to conclude that Jimenez fired at least one round in the direction of the driver's door of Woodfox's car. Jimenez stated his view of Woodfox's right side was blocked when he initially ran from the car. It is reasonable to conclude Jimenez' view of Woodfox's right hand was blocked by his car when Jimenez made his decision to use deadly force. During his interview Jimenez stated he fired his first rounds at Woodfox while Woodfox was near the driver's side fender of the police car. Jimenez' perception of Woodfox's location when he fired his first rounds is contradicted by the angle of the strike mark on the trunk of Woodfox's car. Jimenez stated in his Homicide interview that Woodfox didn't look in their direction as he ran from the car. Based on Jimenez' statement, it appears that Woodfox's attention was not on Aylworth or Jimenez. Since Jimenez' view of Woodfox was partially blocked by Woodfox's vehicle and Woodfox's attention was not directed at Aylworth or Jimenez, it is reasonable to conclude that Jimenez did not have enough facts to conclude that Woodfox had the Intent, Means, Opportunity and Ability to kill or cause great bodily injury to Aylworth or Jimenez.

Woodfox running with his right hand concealed in his waistband, absent any additional facts does not provide a reasonable basis for the use of deadly force. Woodfox did not communicate or verbalize any threat.

The information that Jimenez possessed was that Woodfox was a "dangerous drunk" driver and was evading a vehicle stop. Jimenez was unaware of Woodfox's violent history and had no additional reasons to believe that Woodfox was armed.

Jimenez's belief that Woodfox was an imminent threat, and his initial discharge (three to four rounds), based on these factors, were not reasonable or within Departmental Policy.

Second Discharge

Jimenez stated his second discharge (five to six rounds) was due to his belief that Woodfox still posed an imminent lethal threat. Jimenez's belief was based on Woodfox's failure to comply with his commands to show his hands as he continued running in the direction of his partner.

However, the evidence does not support Jimenez's contentions.

- Jimenez assessed Woodfox's actions and stated Woodfox's right hand was still concealed in his waistband as he ran at a "ninety degree angle" toward Aylworth. Jimenez also stated he gave Woodfox a second command to show his hand and Woodfox failed to comply with his command.
- Aylworth stated Woodfox's movements had "slowed" and both hands were now visible. Aylworth also stated Woodfox didn't have a weapon in his hand. Aylworth further stated Woodfox was running northeast on Fruitvale Ave. away from the police car prior to the second series of gunshots.
- (b)(5)(B) stated Woodfox ran east across Fruitvale Ave. away from the police car.
- Jimenez stated the direction Woodfox ran had not changed prior to the second series of gunshots.
- Woodfox's direction of flight increased the distance between Woodfox and Aylworth providing Jimenez more opportunity to assess Woodfox's actions.

Intent:

Woodfox was running away from the police car and didn't turn in the direction of Aylworth.

Means:

Aylworth saw Woodfox's hands swinging and he didn't have a firearm.

Opportunity:

The distance between Aylworth and Woodfox was increasing as he ran away.

Ability:

Based on the information provided by Aylworth and Jimenez, Woodfox possessed the ability to use a firearm. However, the ability to use a firearm alone does not authorize the use of deadly force.

Conclusion

Based on the statements taken, and the known actions of Woodfox, it is reasonable to conclude Jimenez is being truthful regarding his perception of the events. However, based on all the evidence it is reasonable to conclude Jimenez's decision to shoot was not reasonable without more articulated facts. Jimenez's actions were not reasonable and did not comply with Departmental policy.

Training Issues

Jimenez moved from the "V" of the police car to a position between the "V" of the passenger door and the right front fender. Jimenez's location didn't provide any cover/concealment or tactical advantage. Jimenez close proximity to Woodfox shortened his time and ability to assess and respond to the perceived threat. Jimenez position also obstructed his view of Aylworth and his actions.

Per BFO TB III-B.2, High Risk Vehicle Stop:

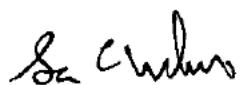
Stay behind your vehicle door and assess the situation....under no circumstances should you step clear of your patrol car. Use your vehicle as cover while you give the suspect(s) initial commands.

Only two of Jimenez' duty magazines were collected at the scene. Jimenez had concluded his interview and went home prior to Officer B. Christensen collecting his third magazine. The on-scene supervisor should ensure that the duty weapon and all three magazines are collected and turned over to the technician processing the scene.

Prepared by:

Henderson Jordan
Sergeant of Police
Internal Affairs Division

Approved by:



Sean C. Whent
Lieutenant of Police
Internal Affairs Division

Edward Poulson
Captain of Police
Internal Affairs Division